



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

HOWREY SIMON ARNOLD AND WHITE LLP
750 BERING DRIVE
HOUSTON, TX 77057

COPY MAILED

MAR 21 2005

In re Application : **OFFICE OF PETITIONS**
Gilson, et al. :
Application No. 09/838,544 : PATENT TERM ADJUSTMENT
Filed: April 20, 2001 :
Dkt. No.: 08157.0011 :

This is a decision on the "NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT," filed August 27, 2004. This matter is being treated under 37 CFR 1.704(b) as an application for patent term adjustment timely filed.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is **GRANTED AS INDICATED HEREIN.**

The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance and Issue Fee Due reflects an adjustment of 160 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicant requests that the Determination of Patent Term Adjustment be corrected from 129 days as indicated on the Determination of Patent Term Adjustment mailed July 21, 2004 to 38 days. Applicants have not set forth how applicants arrived at an adjustment of 38 days and requests that the Office identify how it arrived at its determination of PTA.

A review of the application history reveals that an adjustment of 221 days under 37 CFR 1.702(a)(1) can be attributed to the Office. In accordance with 37 CFR 1.703(a)(1), the adjustment began June 21, 2002, the day after the date that is fourteen months from the date the application was filed, and ended January 27, 2003, the date the non-final Office action was mailed. A further adjustment of 31 days under 37 CFR 1.702(a)(2) can be attributed to the Office in response to the Request for Continued Examination ("RCE") submitted November 19, 2003. In accordance with 37 CFR 1.703(a)(2), the delay began March 20, 2004, the day after the date that is four months after the date

the RCE was filed, and ended April 19, 2004, the day the non-final Office action was mailed.

Thus, at the time of Allowance, an adjustment of 252 days could be attributed to the Office. The adjustment of 252 days is reduced 92 days for applicants' failure to engage in reasonable efforts to conclude prosecution. The reduction began June 28, 2003, the day after the date that is three months after the date a non-final Office action was mailed, and ended July 28, 2003, the date a response to the non-final Office action was filed.

In view thereof, at the time of Notice of Allowance the application is entitled to a patent term adjustment of 160 days. Applicants are advised that at the time the issuance date is set by the Office of Patent Publications, the PTA will be routinely recalculated, including adjustments relative to 37 CFR 1.702(b).

The required application fee of \$200.00 has been charged to Deposit Account No. 06-0916 as authorized in the instant application for PTA.

This application is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Karin Ferriter

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation